IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2172 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVAN NAGRAV CHARAN

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for Petitioner

MR SUDHANSHU PATEL, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 11/06/2003

ORAL JUDGEMENT

#. By this petition under Article 226 of the Constitution of India, the questioned detention order passed on 8.12.2002 by the District Magistrate, Jamnagar, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act") is assailed on divergent grounds.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the

preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

#. The main contention which is advanced on behalf of the petitioner at the time of hearing is that there is a delay of one month and 28 days in passing the order of detention from the date of last registered offence on 10.10.2002, and, therefore, the unexplained delay shall vitiate the detention order. This contention is seriously countenanced by the learned Assistant Government Pleader pointing out the factual aspects of the case. In order to appreciate the main and sole contention advanced before this Court against the questioned detention order, it would be appropriate to

refer to certain factual profile and aspects which have material bearing to the issue which is under consideration and adjudication in this Writ Petition under Article 226 of the Constitution of India.

#. The date on which the last offence came to be registered is 10.10.2002. The statements of witnesses were recorded on 21.11.2002 and verification of the statements came to made on 6.12.2002. It is therefore contended that there is a delay between recording the statements of witnesses and verification by the sponsoring authority. The detention order came to be passed on 8.12.2002 treating the detenu as "bootlegger" and head-strong person by the District Magistrate in purported exercise of Section 3(2) of the PASA Act.

#. The detaining authority placed reliance on as many as eleven offences which were pending and statements of four independent witnesses claiming privilege under Section 9(2) of the PASA Act. The challenge against the detention order on the ground of delay and unexplained long period has been countered and countenanced by the learned Assistant Government Pleader by pointing out various factual material and aspects. It would be interesting to mention that there were as many as eleven cases registered against the petitioner-detenu. The District Magistrate, Jamnagar, after considering the facts and circumstances, found that the activities and commission of frequent offences are likely to be prejudicial to maintenance of public order in the city, and therefore, he exercised powers under Section 3(2) of the PASA Act.

#. After having taken into consideration the rival submissions, the factual panoramic profile, pendency of eleven registered criminal cases, examination of four witnesses, and the likely consumption of time in examination of these number of cases, recording and verification of statements of four independent witnesses, and the intervening lapse in between, in the opinion of this Court, it cannot be said that the present one is a case of unexplained delay. The period which is taken by the sponsoring and detaining authority before the questioned detention order came to be recorded has been satisfactorily explained by the respondent-authorities by filing affidavits. Therefore, there is no manner of doubt that the sole ground which is agitated and raised against the detention order is without any substance and merit, and deserves to be rejected. The affidavits of both the authorities, detaining, as well as the State Government, which considers the representation, are

exhaustive, explanatory, and in detail, and therefore, in the opinion of this Court, the ground raised against the detention order in question must fall on the ground being untrue and not acceptable in the light of facts and circumstances of the case. This proposition is also very much reinforced by the decision of the Apex Court in the case of Hasan Khan Ibne Haider Khan v. R.H.Mendonca and others reported in (2000)3 SCC 511. In that case also, the Hon'ble Apex Court has considered the question of delay and found that there was no undue delay in passing the order of detention.

#. For the reasons stated hereinabove, this Court has no any doubt in arriving at a conclusion that there is no any substance in the sole ground raised against the questioned detention order, and the petition challenging the detention order itself being without any merit and substance, is required to be rejected. Accordingly, it is rejected. Rule is discharged. No order as to costs.

(J.N.Bhatt, Acting C.J.)

(sunil)